

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DENNIS DUBUC,

Plaintiff-Appellant,

v

GOLDEN AND KUNZ, P.C., ROBERT  
GOLDEN, and ARMAND KUNZ,

Defendants-Appellees.

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UNPUBLISHED  
February 21, 2003

No. 238882  
Oakland Circuit Court  
LC No. 01-030403-NM

Before: Kelly, P.J. and White and Hoekstra, JJ.

**MEMORANDUM.**

Plaintiff appeals as of right the order dismissing this action for failure to attend a status conference. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

MCR 2.401(G) provides:

(1) Failure of a party or the party's attorney to attend a scheduled conference, as directed by the court, constitutes a default to which MCR 2.603 is applicable or grounds for dismissal under MCR 2.504(B).

(2) The court shall excuse the failure of a party or the party's attorney to attend a conference, and enter an order other than one of default or dismissal, if the court finds that

(a) entry of an order of default or dismissal would cause manifest injustice; or

(b) the failure to attend was not due to culpable negligence of the party or the attorney.

The court may condition the order on the payment by the offending party or attorney of reasonable expenses as provided in MCR 2.313(B)(2).

This Court will review a trial court's order of dismissal under MCR 2.401(G) for abuse of discretion. *Schell v Baker Furniture Co*, 232 Mich App 470, 474; 591 NW2d 349 (1998), aff'd

461 Mich 502 (2000). The purpose of the rule is to ensure that the parties conduct meaningful settlement talks, which can only be accomplished if the parties attend the conference. *Id.* at 477.

Dismissal is a drastic step that should be taken cautiously. Before imposing such a sanction, the trial court is required to carefully evaluate all available options on the record and conclude that the sanction of dismissal is just and proper. *Vicencio v Ramirez*, 211 Mich App 501, 506; 536 NW2d 280 (1995). Where a trial court fails to evaluate other available options on the record, it is an abuse of discretion to dismiss the case. *Id.* at 506-507.

Some of the factors to be considered before imposing the sanction of dismissal are: (1) whether the violation was willful or accidental; (2) the party's history of noncompliance with orders; (3) prejudice to the opposing party; (4) history of deliberate delay; (5) degree of compliance with other parts of the order; (6) attempts to cure the defect; and (7) whether a lesser sanction would better serve the interests of justice. *Id.*; *Dean v Tucker*, 182 Mich App 27, 32-33; 451 NW2d 571 (1990).

The trial court abused its discretion where it failed to consider alternative sanctions on the record before dismissing the case. Plaintiff's violation was negligent rather than willful. Although plaintiff did not readily comply with discovery requests, there is no showing that he repeatedly failed to comply with discovery orders. Defendants were not prejudiced by plaintiff's failure to attend the conference. Any harm could have been remedied by rescheduling the conference, and assessing costs against plaintiff for defendants' expense and loss of time.

Reversed and remanded for further proceeding consistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly

/s/ Helene N. White

/s/ Joel P. Hoekstra